

ceive it late. His merely sending or asking for it from the insured not to hurt him. He is free so long as the premium is not paid.

Premium stipulated *portable* may be held to have been changed into *quérable*, where, e.g., the company has time after time sent to collect renewal premiums after *échéances*. Cassn. 1863, 10 June; 1868, 5 May; and so even though premium to be paid within a fixed delay à *peine de déchéance*.

Some late French policies make the insured renounce in advance to the exception of *quérabilité* as to premiums. This shows that that exception had or has fastened itself.

Usage may make premiums stated *portables*, in policy, *quérables*.

§ 294. *Effect of adjustment of loss.*

Adjustment the same as in marine insurance is not practised in fire. Adjustment on the policy is what takes place in marine insurance. In fire insurance adjusting or fixing the amount of the loss is not a waiver of right (till actual payment) by insurers to oppose their freedom owing to conditions violated. The insurer need not before actual payment allege fraud, even; particularly when, at stating loss, they were ignorant of the condition having been violated.<sup>1</sup> But after payment (*semble*) the insurer can only get back, or *répéter*, for fraud.<sup>2</sup>

Where, after informal preliminary proofs, part payment is made by the insurers, such payment has been held a waiver of other or more formal proofs.<sup>3</sup>

Any formal defect in preliminary proof may be supplied, *whenever* objection to pay a loss is put upon that ground.<sup>4</sup>

Says Angell (end of § 244): Churchwarden's certificate *actio non* till production of. Action brought, can it afterwards be supplied? Before action, perhaps so.

§ 294. *Waiver by President.*

The verbal consent of the president cannot

<sup>1</sup> *Shepherd v. Chewter*, 1 Camp., and *Herbert v. Champion*, 1 Camp. 134.

<sup>2</sup> In *Matthews v. Genl. M. I. Co.*, vol. ix of 1854, La. R., is a case of adjustment set aside made in ignorance by insurer of fraud by insured.

<sup>3</sup> 14 Barbour R. 206.

<sup>4</sup> 25 Wend. 383; 16 Barbour, 255.

be a waiver where there is a by-law requiring the consent to be in writing. The president is a mere agent, with limited power, and cannot waive by-laws so, and could not bind an incorporation or company with by-laws so.<sup>1</sup>

The president of an insurance company, as such, cannot waive preliminary proofs.<sup>2</sup>

§ 295. *Waiver by Secretary.*

Waiver by parol by a secretary cannot be proved to bar prescription of action, or to make out that the time within which the action had to be brought was extended.<sup>3</sup>

Where a policy is under seal, the rights of the company under it cannot be waived, even by a writing of a secretary, unless formally authorized.<sup>4</sup>

The directors cannot waive by parol the performance of conditions precedent contained in a sealed policy; still less can a mere managing director and secretary.<sup>5</sup>

§ 296. *Miscellaneous observations.*

Some policies say that no condition shall be held waived unless "the waiver be clearly expressed in writing, signed by the company's secretary or agent, and delivered to the assured or his agent."

The judge of the County Court, in 1856, in the case of *Ward v. The British Industry Life Ass. Co.*, held that the fact of agents of a company (who had power to negotiate policies) taking premiums from the assured after default, was waiver of objection by the company, but the Court of Common Pleas reversed the judgment, on the ground that the agent had no authority to waive the rule by which the policy was forfeited by default to pay premium in four weeks.

In *Brady v. The Western Ins. Co.*<sup>6</sup> the con-

<sup>1</sup> 6 Gray R.; *Hale v. M. M. F. Ins. Co.*, *ib.*

<sup>2</sup> Angell, end of § 458.

<sup>3</sup> *Lampkin v. Western Ass. Co.*, 13 U. C. Q. B. Rep. See "Proof." In this case the policy was under seal.

<sup>4</sup> *ib.*, p. 242.

<sup>5</sup> *Scott v. Niagara Dist. Ins. Co.*, 25 U. C. Q. B. Rep., A. D. 1867. *Lampkin v. West. Ass. Co.* re-affirmed. See *Dill's case ante*, where the Court in Quebec held that the president and secretary of a company could by parol extend the fourteen days allowed for filing particulars.

<sup>6</sup> 17 U. C. Com. Pl. Rep.